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Volume XIV, No. 6

McGILL UNIVERSITY FACULTY OF LAW
UNIVERSITÉ McGILL FACULTÉ DE DROIT

October 21, 1993
le 21 octobre, 1993



SHAKESPEARE ET LE DROIT DES OBLIGATIONS

Marie-Andrée Vermette, B.C.L. I

Quoi de mieux qu'une soirée au théâtre pour se distraire et oublier pour un moment le droit, le Code civil, M. le juge Beetz et tous ses semblables! C'est avec cette idée en tête que je me mis en direction du Théâtre du Nouveau Monde (TNM) pour assister à la représentation de la pièce "Le Marchand de Venise" de Shakespeare. Mais une mauvaise surprise m'attendait: Shakespeare, pour me faire plaisir, avait basé sa pièce sur le droit des obligations...

Voici en quelques mots un résumé de l'histoire. Shylock, un marchand vénitien, consent un prêt de 3 000 ducats à Antonio. Toutefois, il insiste pour inclure au contrat une clause stipulant qu'Antonio devra lui donner une livre de sa chair advenant le non-remboursement de la dette au délai fixé. Antonio, convaincu qu'il disposera du capital nécessaire avant la date

d'échéance, contracte avec Shylock. Pour les besoins de l'intrigue, tous les navires d'Antonio font naufrage et celui-ci, par conséquent, est ruiné. Shylock, animé depuis plusieurs années d'une haine féroce pour Antonio, réclame alors l'exécution du contrat et une livre de la chair d'Antonio.

Inutile de préciser qu'il me fallait faire des efforts considérables pour demeurer assise et ne pas expliquer à l'auditoire le caractère impossible de la situation. En effet, la dite clause est invalide, car elle ne respecte pas, entre autres, les règles de l'ordre public et des bonnes moeurs. J'ai cependant réussi à me taire: il aurait été trop cruel de révéler à l'assistance que Shakespeare n'était en réalité qu'un inculte et qu'il méconnaissait les règles les plus élémentaires du droit; c'aurait été comme révéler à des enfants que le Père Noël n'est en fait que "mononcle" Roger...

Shakespeare, tout en ignorant certaines règles de base du droit des obligations, avait quand même un sens inné de la justice. En effet, voyez comment la pièce se termine. Le juge donne raison à Shylock et lui permet de prélever une livre de chair du corps d'Antonio. (On voit alors Shylock aiguiser son couteau avec allégresse.) Cependant, le juge poursuit son raisonnement et décide d'interpréter le contrat à la lettre. La clause n'autorise le créancier qu'à une seule livre de chair: si Shylock prend à Antonio ne serait-ce qu'un milligramme de chair de plus ou s'il préleve aussi du sang, il devra en répondre devant la justice. Devant l'impossibilité de la chose, Shylock abdique. Et la justice triomphe. Au théâtre, comme au cinéma, les "méchants" perdent presque toujours...

La pièce "Le Marchand de Venise" est présentée jusqu'au 30 octobre au Théâtre du Nouveau Monde.

ROLAND HAS SOMETHING TO SAY

Roland Legault, Social Co-ordinator

I'm writing this because I have recently received several questions (read complaints) about parties in the Faculty. What is it about this place? Half the people here seem to spend their time writing earnest little articles to the *Quid* about how to save the planet [Ed. note: ahem], while the other half are pestering me about why we don't organize more occasions for the denizens of the Faculty to reveal their true selves with the help of

a little bottled personality. So, in response to the scurrilous rumours circulating that I've been neglecting my duties in favour of scholastic endeavours (I swear, the plastic on my casebooks is as yet unscathed), I am hereby informing one and all just how your social co-ordinator has been spending his time.

The most important news I have for you concerns the price of beer. The beer supply has been of great concern this year, and has caused us all sorts of

(Continued on page 4)

Inside This Issue Dans ce numéro

Shakespeare	1
Roland spews	1
Announces	2
Editorial	3
Letter to Editor	3
New York Bar	4
Red Chamber	4

ANNOUNCEMENTS / ANNONCES

THE MCGILL/INTERAMICUS HUMAN RIGHTS FORUM

In conjunction with the **Astra Lectures in Ethics of the McGill Centre for Medicine, Ethics and Law**

Speaker: The Honourable Bernard Kouchner, L'Association pour l'action humanitaire

Topic: "Children, War, and Humanitarian Assistance"

Time: Thursday, October 21st, 6:00 to 7:00 p.m.

Location: Moot Court, Chancellor Day Hall, 3644 Peel St.

Dr. Kouchner is the founder of the internationally-renowned "Médecins sans frontières" and served as both Minister of Humanitarian Relief and Minister of Health in French governments.

Speaker: Professor Harold Koh, Yale Law School

Topic: "Trans-National Public Law Litigation: The Case of the Haitian Refugees"

Time: Wednesday, October 27th, 12:30 to 2:00 p.m.

Location: Moot Court, Chancellor Day Hall, 3644 Peel St.

Professor Koh has litigated a number of landmark cases before the United States Supreme Court. He is Director of the Schell Center for Human Rights at Yale University.

LEGAL CLINIC COURSE

A **Wine & Cheese Reception** will be held on Wednesday, October 20th, 4:00 to 6:00 p.m. in the Common Room. All students registered in the course are welcome. Representatives and supervising lawyers from the clinics will be there as well.

GRADUATE STUDIES

The **Graduate Studies Centre** will be holding an information meeting for students interested in court clerkships, graduate studies and scholarships. It will be held on Tuesday October 19 from 17:00 to 18:00 at 3661 Peel St., room 106.

GRAD COMMITTEE

Quid Novi is published weekly by students at the Faculty of Law of McGill University, 3644 Peel Street, Montréal, H3A 1W9. Production is made possible by support of the Dean's office and by direct funding from the students. Les opinions exprimées sont propres à l'auteur. Toute contribution n'est publiée qu'à la discréption du comité de rédaction et doit indiquer l'auteur ou son origine.

The **Grad Committee** is seeking sweatshirt makers for a limited edition Grad sweatshirt. All those interested please leave a note in the Grad box or contact Stacey at 288-5675.

The **Grad Committee** will be selling "PIZZA IN THE PIT" every Wednesday from 11:30 - 1:30 at \$2.00/slice.

YEARBOOK: Res Ipsa Loquitur

Please pick up the Grad Comment Sheets for the yearbook outside the LSA Office, if you haven't already done so. The deadline for the Comment Sheets has been extended until November 5 (Friday). Please hand them in to the Res Ipsa Loquitur box in the LSA Office. Thanks.

TUTORIAL PROGRAM: ATTENTION ÉTUDIANTS ET ÉTUDIANTES DE 3E ET 4E ANNÉES!/ ATTENTION THIRD AND FOURTH YEAR STUDENTS!

Nous recherchons actuellement des étudiants et étudiantes intéressés à juger les tribunaux-école de deuxième année. Aucune qualification n'est requise, mais la préparation de l'audition et la lecture des factums demandent quelques heures. Les tribunaux-école se tiendront du 25 au 29 octobre et du 1er au 5 novembre. Les étudiants intéressés peuvent indiquer leur disponibilité sur les formulaires affichés au babillard des travaux pratiques. Merci!

We are currently looking for student judges from 3rd and 4th year to judge the second-year moots. Judging a moot requires no specific qualification other than a willingness to spend a few hours reading the factums and preparing the hearing. The moots will be held from October 25 to October 29 and from November 1 to November 5. Interested students should indicate their availability on sign-up sheets posted on the tutorial board. Thanks!

ST. THOMAS MORE SOCIETY

The next meeting of our discussion group will take place on **Friday, October 22 at 12:30, in Room 201**. We will examine two short pieces: Stephen C. Hicks' article, "Politics of Jurisprudence: Liberty and Equality in Rawls

and Dworkin" and an excerpt from Ronald Dworkin's Taking Rights Seriously. The readings are available in the St. Thomas More Society box in the LSA Office. Welcome to all! (Please note that the meeting is scheduled for **Tuesday**, given the Human Rights lecture scheduled on Wednesdays in Mid-October).

DELTA THETA PHI

All those who wish to join **Delta Theta Phi** - McGill's only professional legal association - come to a meeting Wednesday, October 20, 12:30 p.m. in the Common Room. Bring your membership forms and sign up! Call George at 398-9251 for more information. All new and old members welcome.

A Message From The LSA

Remember that the LSA Executive holds office hours 4 days a week now (Wednesday is our day of rest). The exact times we are available will be posted outside the LSA Office. All students note that the LSA will be off limits to all lunchers during these times!

Correspondante Desirée/Penpal Sought

Le *Quid Novi* a reçu une lettre. On cite la suivante: "Je suis étudiant ivoirien à la faculté de Droit de l'Université d'Abidjan, Côte d'Ivoire. Je suis au premier cycle universitaire (DEUG I, Diplôme Études Générales Universitaires, 1ere Année). Le premier cycle allant de la 1ere Année de licence à la 3e année de licence. Je suis âgé de 23 ans et j'aimerais, à ce titre d'étudiant en Droit, échanger de larges identités de vues (juridiques, sociales voire économiques...) avec une étudiante en Droit de votre excellente université. Je tiens à souligner que je joindrai ma photo à la première correspondance. Je suis un bilingue. Par conséquent je ne manquerai pas d'écrire aussi bien en Anglais et en Français." Pour autres informations, appelez Jay à 270 1589.

Upper year law student driving to New York city looking for someone to share the expenses. Departure: Friday, October 22, 1993; Return: Monday, October 25, 1993. Everything is flexible. If interested, please call 481-5659.

Rédacteur-en-chef/ Editor in chief:
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L.S.A. is looking for a new
LAW SCHOOL LOGO.

It can be based on a theme, mascot, or in the shape of a crest, or on any other subject.

TEST YOUR CREATIVITY!

We need all submissions by Tuesday, October 26, at 5:00pm. Drop them off in the BCL 111 box in the L.S.A. office.

For further information, contact Ann Francis at 683-2050.

LET YOUR IMAGINATION RUN WILD!!!

EDITORIAL: The Despicable Reality of Appearance Politics

Has our political process been reduced to a game of slick imagery, smoothly hollowed words and belligerent denigration? In the context of a federal election the issues tend to be broad, national ones and, thus, are susceptible to oversimplification and gross generalization. This is inevitable given the limited worth of promises for the future and the time and space constrictions of a media catering to a public with a short attention span.

However, even beyond the inherent weaknesses of the system there goes on a continual embellishment of the superficial aspects of democratic partisan politics. One might label this appearance politics. It is encouraged not only by the politicians and the media but also by you, the voter. It often seems that voters are either taken in by the persuasive rhetoric and sensationalism or completely jaded by the empty promises and back room deal-making. While the former perpetuates the superficiality, the latter often leads to disinterest and no desire to vote at all in a system that seems to move with its own momentum. Voters must learn to read between the lines and realize that their vote can make a difference.

First, a look at the ubiquity of appearance politics. The idea that one must spend money to look good is an adage that

campaign organizers live by. We see crisply choreographed commercials that zip from Peggy's Cove to Château Frontenac to the CN Tower to Saskatchewan wheat fields to Jasper peaks to Vancouver Island forests all to the tune of "Chariots of Fire"ish inspirational harmony (while they tell us how lucky we are to be Canadians and how they will make us even luckier). Then there are the flyers, the buttons (and pins for *Kimites*), the newspaper space, the air time, the staff, the campaign offices - the more one party has, the louder they can cry, "We are the saviours!" This leads to yet another inherent weakness in the process: the inequality of spending limits. For this election the limits (based on the number of voters in ridings where a party has a candidate) are: PCs and Liberals-\$10,531,510; NDP-\$10,499,279; Reform-\$7,519,795; Bloc Québécois-\$2,718,745. Where is the fairness in this?

The wildly popular television debates provide a showcase of appearance politics. Here we see public images made and broken before our eyes. Meanwhile, behind our eyes our vote may be changing or forming as a result of this two hour image forum. A politician who happens to pounce masterfully on a single misplaced word of an opponent may gather votes by the thousand. One is

reminded of the 1984 TV debate where John Turner claimed he had no option but to accept the numerous patronage appointments left on his shoulders by Pierre Trudeau. He was burned to ashes by Brian Mulroney's repeated "You had an option, sir." Then, of course, Mr. Mulroney went on to grace us with ample appointments of his own. After this year's debate many of those who were on the CBC call-in line felt Kim Campbell and Jean Chrétien had been overly arrogant while Lucien Bouchard, Audrey McLaughlin, and, especially, Preston Manning, shone in their "clarity and consistency". Votes won or lost via a two hour audio-visual byte.

The message is that the appearance is not enough. Voters must learn to look behind the national mouthpiece figureheads. Be proactive. Do some research and find out about the parties policies from a range of sources instead of just taking in everything that is said or shown. Don't just tow the party line; find out about all the candidates in your riding because your MP is your direct route to tangible change. Appearance politics distort one's vision. Once voters realize this they can begin to focus.

Letter to the Editor

Laurence Detière, BCL I

L'éditorial du 4 octobre, *Social programs: Luxury or Necessity?*, a soulevé de nombreux points très controversés actuellement. En effet, en considérant la possibilité de privatiser certaines activités gouvernementales, on en vient à remettre en question non seulement le rôle de l'Etat dans la vie sociale et économique de la nation, mais aussi l'attitudes des individus envers divers problèmes et leurs solutions.

Tout d'abord, je crois que les exemples "mélodramatiques" donnés sont plus que des scènes "not in the least unrealisitic". Bien au contraire, et voilà peut-être le paradoxe de notre société, ils sont très réalistes et trop fréquents. On oubli souvent la disparité entre les membres d'une société, et surtout d'une même génération, puisque nous côtoyons généralement nos pairs, au sens strict du terme, alors que des gens de notre âge mènent des vies diamétralement opposées à la nôtre.

C'est bien là le point de départ de nombreux programmes sociaux qui visent à

minimiser les conséquences d'une stratification sociale. En effet, que l'on accepte ou non l'existence de "catégories sociales", leur présence est indéniable. C'est donc dans l'objectif d'une justice sociale, ou d'une plus grande efficacité économique, que l'Etat, mi-providence, mi-interventioniste, met en place une myriade de programmes sociaux. Aider, assurer, prévoir, mais où trouver l'argent? On remet alors en cause le rôle de l'Etat, on questionne l'efficacité et la nécessité de certains programmes.

L'éditorial suggère que la compassion humaine est l'élément fondateur de notre soutien aux politiques sociales. Si l'on remet en cause le rôle de l'Etat, il faut d'abord évaluer notre attitude envers autrui. Parler de compassion sous-entend que la nature humaine est fondamentalement bonne. Or l'est-elle vraiment? N'est-il pas possible que le soutien de programmes sociaux soit une façon de se décharger d'un pouvoir (devoir?) d'aider l'"autre". N'est-il pas plus facile de donner de l'argent (impôts, assurances, dons) et de critiquer que de

faire quelque chose d'actif que dans le fond nous n'avons pas envie de faire, ou ne pouvons faire pour diverses raisons. Aidons-nous les moins fortunés par altruisme honnête, ou pour se décharger d'un sentiment de culpabilité d'être parmi les nantis, ou de peur que nous en fassions partie un jour. L'appui des programmes sociaux nait peut-être d'un idéal altruiste, mais n'est-il pas accompagné d'une part de lâcheté ou d'égoïsme pour la majorité des gens?

Pourquoi, comme le suggère l'éditorial, sacrifions nous les programmes sociaux au moment des élections? D'autres sujets, qui semblent nous toucher plus personnellement dans l'immédiat nous concernent plus à ce moment crucial. Ou peut-être le rêve d'égalité sociale paraît-il utopique dans des sociétés anonymes comme les nôtres. Dans les grandes métropoles, on est, après tout, loin du village où le voisin est vraiment le "prochain".

Et peut-être se dit-on aussi qu'après tout, quoiqu'il arrive, l'Etat et ses programmes sociaux, seront toujours là.

NEW YORK/ NEW ENGLAND BAR REVIEW COURSE

The New York Bar Review Course will be held at the McGill Faculty of Law in the spring of 1994. This is a seven week course that will cover all subjects examined on the New York Bar.

Students may also enroll in other state bar review courses, e.g. Massachusetts. For further information or registration please contact Theresa Hinz at (514)277-4376 (leave a message with telephone number) or send E-mail to

T_Hinz@LSA.LAN.MCGILL.CA.

Please note that there is a \$525 reduction on the price of the New York Bar Review Course if registration is completed before October 31, 1993!!!

Law V-Ball

NO MERCY crushes a FEW GOOD LLAMAS 15-1, 15-1, Kudos to rookie sensation Jon "The Hammer" Learner and player coach, spiritual leader Sanjay Gandhi

ROLAND

(Continued from page 1)

problems. Those of you who attended the last Coffee House ("Come try a different case") will already know that we have had to return to last year's price of \$1.50 per beer. This was forced upon us (very reluctantly) by a sudden refusal on the part of our original supplier the Engineers to sell us beer at the agreed price. I can already hear the cry going around the Law School, "Roland has lost his touch! He can't recognize even a simple breach of contract! Somebody lend him a Civil Code!"

Yes, I can recognize a breach of K, but there isn't much to be done when certain elements of the deal cannot be reproduced in print for fear of the legal consequences. So, we're stuck with a higher price. Still, we hope to prevail in the end (in our own little way). Watch this space for future developments.

There is one more thing you should all know about beer pricing. We are in the process of ordering "Faculty of Law Faculté de droit" beer mugs. Once we have them, we will go back to a system of graduated beer prices. People who need a

The Red Chamber

**George Sopel, BCL III
Law Senator**

Partly from personal initiative, and partly from persuasive request (i.e., Presidential Decree), I bring to your attention news from the Academic governing body of the university, the Senate of McGill University.

Actually, at this point in the year, there is no news of major concern to report, so I shall keep this as brief as it takes to skim in between breaths from Professor Scott's encyclopedic knowledge of Canadian Constitutional Law.

The Senate of McGill University is the body entrusted with matters of academic and related concerns pertaining to the university. It thus serves a concurrent function alongside the Board of Governors, whose own jurisdiction is relegated mainly to matters pecuniary (i.e. financing).

The Senate periodically--every second week or so--and deals with the various matters which fall under its jurisdiction as they arise. While much of the Senate agenda is purely informative, issues do arise where a vote of the body becomes important; for instance, striking committees to deal with a certain matter, or actually voting to adopt a committee's recommendation itself.

Little has been evidenced so far this year in terms of earth-shaking resolutions. However, I will keep you informed as these do arise. As well, if you have a particular concern which you feel is a subject appropriate to be brought up at Senate, please feel free to discuss the matter with me. (I have a mailbox in the LSA office.)

It is a pleasure to serve as the law students' representative to Senate, and I will do my best to help you in any way I can.

plastic cup for their drink will be charged \$3. If they bring that cup back for subsequent drinks, they will be charged \$2. Those with fully reusable mugs (whether they use ours or any other one they may have brought from home) will be charged \$1.50. I hope to have the mugs here before the last Coffee House of the semester, so be prepared (and don't forget to buy extra ones as Christmas presents).

The next bit of information concerns parties. First, the graduation committee organized a party for last week, at Bal St. Louis. Signs were up around the Faculty, with full details regarding day and time. From what I've heard, everybody was welcome, so I hope you got out there and had some fun. Next, we (that should probably read I) are (am) in the process of setting up a party for Hallowe'en, in conjunction with M.B.A. and perhaps medicine. This party is tentatively scheduled for Saturday, October 30, at the Loft. Time and place are far from definite, so keep your eyes open for the posters that will go up in the next few weeks (in spite of the fact that I'm absolutely convinced no one ever reads the damn things).

Finally, I want to say a word about my own reason for choosing to serve a

four year sentence with no possibility of parole: Coffee House. L'évènement à lieu le jeudi à 16 heures. Chaque jeudi. Chaque semaine. Si, pour une raison quelconque, il faut annuler notre "5 à 7" vous serez avisé(e)s par une affiche au tableau près du Porter's Desk. Sans cet avis, il y aura un Coffee House. Consequently, I don't want to hear any more questions along the lines of, "Roland, is there a Coffee House this week?" Yes, there's a Coffee House. There's always a Coffee House, unless some dastardly person (please don't take that personally if it refers to you) has snuck behind my back and booked the Common Room.

While we're on the subject of Coffee House, I would like to draw your attention to the sign up board posted downstairs in the Pit. Anyone who is interested in helping out can put their name on the board, for whatever date and time is convenient to them. Help is always appreciated (many thanks to those who have already contributed), and you might be surprised that you can even have fun from behind the bar. The only trouble is having to fend Jody off when he wants a beer.